



Alexandria Police Department

Directive 10.37



WARRANTLESS SEARCH

Effective Date: 08-22-2016

Cancels: 12-30-2015

Updated Date:

Section(s):

SME Review Date:

Updated Date:

Section(s):

2019

Updated Date:

Section(s):

CONTENTS

10.37.01	POLICY
10.37.02	DEFINITIONS
10.37.03	PROCEDURES

10.37.01 POLICY

The Fourth Amendment of the Constitution protects the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." As a general rule, searches require a search warrant. There are exceptions to this general rule, wherein a search warrant is not required as a prerequisite to conducting a search (i.e., administrative, automobile exception, community caretaking, consent, emergency aid, exigent circumstances, hot pursuit, incident to arrest, protective sweeps, and stop & frisk). In order to search without a warrant, officers must comply with the requirements for an exception as currently set down by the courts.

It is the policy of the Alexandria Police Department to conduct field interviews, investigative stops, frisks and searches in accordance with mandates prescribed under federal and state law.

10.37.02 DEFINITIONS

Field Interview – A brief detention of a person to determine the person's identity and to resolve the officer's suspicions about possible criminal activity. A field interview is intended to resolve an ambiguous situation. A field interview contrasts with an investigative stop, which must be based on reasonable suspicion of criminal behavior. A field interview may be conducted only with the voluntary cooperation of the citizen being interviewed.

Frisk – *A limited, protective search of a person's clothing or effects for the sole purpose of determining whether the person is concealing a weapon on or about his person, and based upon a reasonable, articulable suspicion that the person is armed.*

Investigative Stop - The temporary detention of a subject when the officer has reasonable suspicion that criminal activity has occurred, is occurring, or is about to occur and that the person to be stopped is involved.

Reasonable Suspicion – A belief based upon objective facts which lead an officer to reasonably suspect that a crime has been committed or is about to be committed. A reasonable suspicion must be based on the totality of the circumstances, including the officer's knowledge, training and experience. A reasonable suspicion does not exist unless the officer can articulate the objective factual basis for the officer's belief.

10.37.03 PROCEDURES

A. Field Interview

The Fourth Amendment permits an officer to approach a person and ask if he or she is willing to answer questions, and to ask questions if the person is willing to listen and respond. The person's voluntary answers to such questions may be offered into evidence in any subsequent criminal prosecution of that person. Officers are expected to gather information with proper observance of strict constitutional safeguards that exist to protect both the civil rights of citizens and the rights of officers to obtain information crucial to the reduction and prevention of crime.

B. Investigative Stop

1. A law enforcement officer may temporarily detain a person in a public place if reasonable suspicion exists that a crime has been committed, is being committed, or is about to be committed; or the officer reasonably suspects that the person is illegally carrying a concealed weapon in violation of Virginia Code §18.2-308. A temporary detention is a seizure under the Fourth Amendment. However, the U.S. Supreme Court has long held that police officers must be able to make such stops even though probable cause to arrest may not exist. Terry v. Ohio, 392 U.S. 1 (1968).
2. The Virginia Supreme Court affirmed the validity of an investigative stop in Simmons v. Commonwealth, 231 S.E. 2d, 218 (1977). In its opinion, it quoted with approval the following language from Adams v. Williams, 407 U.S. 143, 145-46 (1972):

“The Fourth Amendment does not require a police officer who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence

of good police work to adopt an intermediate response. A brief stop of a suspicious individual in order to determine his identity or to maintain the status quo momentarily while obtaining more information may be reasonable in light of the facts." Simmons, 231 S.E. 2nd at 220.

3. The following factors may be considered in determining whether reasonable suspicion exists to justify an investigative stop of a person. These factors must be considered in view of the officer's knowledge, training, and experience. All of the factors need not be present to establish reasonable suspicion:
 - a. The officer has valid knowledge that a person has a prior felony record;
 - b. The person fits the description of a wanted notice;
 - c. The person has exhibited furtive conduct such as attempting to conceal an object from the officer's view, or reaching under the seat of a car;
 - d. Clothing worn by the person is similar to the suspect's clothing described in a lookout for a known offense;
 - e. The person exhibits unusual behavior, such as staggering or appearing to be in need of medical attention;
 - f. The area and time of day are indicative of possible criminal activity, such as a person observed in a public area which has a history of recurring crime during the same time period as the time of the stop;
 - g. **While hearsay information is acceptable in developing a basis for stop and frisk, the use of hearsay is dependent upon the content of the information possessed by the officers and its degree of reliability. An anonymous tip from a citizen standing alone is generally not enough to justify a police officer's stop and frisk of a person. Officers must corroborate information furnished by citizens or from anonymous tips by their own observations. Where a tip lacks sufficient indicia of reliability to provide reasonable suspicion to make a Terry stop, the officers' suspicion must be based on the officer's own observations of the subject, or other corroborating information.** Florida v. J. L., 529 U.S. 266, 266 (2000)
4. Like non-criminal field interviews, an investigative stop must be conducted as briefly as possible. The length of the investigative stop must be restricted to the amount of time necessary to confirm or dispel the officer's reasonable suspicion of criminal activity. Once the detaining officer determines that the basis for reasonable suspicion no longer exists, the person detained will be immediately released. Should the suspicion be reinforced with additional information or if the officer develops probable cause, the period of detention could be lengthened.

5. A field interview card (15-A) must be completed for each person detained during an investigative stop.

C. Frisk**[1.2.4.b]**

1. Although an officer may have a basis for stopping an individual, there must be a separate belief, based on articulable facts, that a suspect is armed and dangerous in order to justify a frisk. If an officer reasonably believes that a person may be armed and constitutes a danger to the officer or other person(s), the officer may conduct a *limited, protective search of a person's clothing or effects*. In addition, courts have held that in situations where the subject is wearing a heavy overcoat, the officer may require the subject to remove the coat so that he may be patted down.
2. Even though Terry v. Ohio involved the stop and subsequent pat-down search for weapons of a person suspected of criminal activity, it did not restrict the protective search to the person of the detained suspect. Michigan v. Long, 463 U.S. 1032 (1983). The Court recognized that protection of police and others could justify more expansive protective searches when there exists reasonable suspicion that the suspect poses a danger. Thus, an officer can search an area within the person's reach where a weapon may be found. A lawful protective search for weapons, which extends to an area beyond the person in the absence of probable cause to arrest, must have all of the following elements present:
 - a. A lawful investigative stop of a person or vehicle.
 - b. Reasonable suspicion that the suspect poses a danger, as defined by the Court in Michigan v. Long, 463 U.S. 1032 (1983), such reasonable suspicion must be based upon "...specific and articulable facts, which taken together with the rational inferences from those facts, reasonably warrant the officer to believe that the suspect is dangerous and the suspect may gain immediate control of weapons."
 - c. The search must be limited to those areas in which a weapon may be placed or hidden.
 - d. The search must be limited to an area, which would ensure that there are not weapons within the subject's immediate grasp.

D. Search by Consent**[1.2.4.a]**

An officer may conduct a consent search of a person or the person's property when such consent to search is given by the person to be searched, or when such consent is given by the person with sole or common authority (standing) over the property to be searched. The standard is whether the consent was freely and voluntarily given. The burden is on the officer to prove that consent was obtained voluntarily. Consent

is not irrevocable, and may be withdrawn at any time after it has been given. The person may limit the scope of the search in any way that he or she wishes and the officer is bound by that limit. A search that exceeds the scope of the consent is not valid.

E. Vehicle Stops and Searches

[1.2.4.c]

1. Carroll Doctrine

- a. When probable cause exists to believe that a vehicle in a public place contains contraband or evidence of a crime, a warrantless search of the vehicle may be conducted.
- b. The scope of the search is defined by the object of the search and the places in which there is probable cause to believe that the object of the search may be found.
- c. If probable cause justifies a search of the vehicle, an officer may search, without a warrant, the vehicle and any containers in the vehicle, which may conceal the object of the search.
- d. If probable cause justifies only a limited search of a vehicle for a particular container, the container itself may be searched without a warrant.

2. Search Incident to Arrest (Vehicle)

- a. A search of the entire passenger compartment (including any container found within the passenger compartment) may be undertaken only if the arrestee is unsecured, i.e., not in handcuffs, and within reaching distance of the passenger compartment at the time of the search, or it is reasonable to believe the vehicle contains evidence of the offense of arrest. See Arizona v. Gant, 129 S. Ct. 1710 (2009)
- b. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless a warrant is obtained or you can show that another exception to the warrant requirement, i.e. the Carroll Doctrine, applies.

3. **Procedures for inventory searches** of towed vehicles are outlined in Police Directive 11.22 Impounded, Stolen and Recovered Vehicles.

[1.2.4.f]

F. Crime Scene**[1.2.4.d]**

1. There is no crime scene exception to the search warrant requirement. Although exigent circumstances may permit an emergency entry into a dwelling, the scope of a search must be limited to providing aid of those believed to be in need of assistance, or to secure evidence in plain view. Once aid is provided, a search warrant should be obtained before searching for evidence or contraband. Mincey v. Arizona U.S. 385 (1978); Michigan v. Clifford, 464 U.S. 287 (1984); Hunter v. Commonwealth, 8 VA. App. 81, 378 S.E.2d 634 (1989).
2. But a warrantless search must be "strictly circumscribed by the exigencies which justify its initiation." Terry v. Ohio, supra, and where there are no exigent circumstances which would indicate the need for immediate aid, or that evidence would be lost, destroyed, or removed during the time required to obtain a search warrant, a warrantless search may only be conducted as defined under Virginia Code §19.2-59.
3. Absent the consent of the person with sole or common authority (standing) over the property to be searched, or such exigent circumstances as outlined above, officers will proceed as defined in Virginia Code §19.2-59, as to the search of a crime scene. When possible, and absent exigent circumstances, the Commonwealth's Attorney will be contacted to determine the need for obtaining a search warrant to search a crime scene.

G. Plain View**[1.2.4.d]**

The legal rationale for the plain view doctrine is that if contraband is left in open view and is observed by a police officer from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and therefore no search has occurred within the meaning of the Fourth Amendment.

H. Hot Pursuit

The police generally do not need a search warrant to enter a house if an officer is in "hot pursuit" of someone the officer reasonably believes has committed a crime. Warden v. Hayden, 387 U.S. 294 (1967). A suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place. United States v. Santana, 427 U.S. 38 (1976).

I. School Situations

1. The U.S. Supreme Court has established a lesser standard than probable cause for searches by school personnel. "The substantial need of teachers and administrators for freedom to maintain order in schools does not require strict adherence to the requirement that searches be based on probable cause...rather, the legality of a search of a student should depend simply on

reasonableness, under all the circumstances" (New Jersey v. TLO, 469 U.S. 325 (1985)). However, when a trained police officer enters into discussion or preparation for the search, the higher standard of probable cause may be required.

2. The Fourth Amendment applies only to State actors. Consequently, administrators and staff at a private school, (for example, Bishop Ireton High School, Episcopal School, etc.) can search a student or the student's locker and personal property at any time, for any reason. There need not be a prior finding of probable cause or reasonableness under the circumstances. However, if a private school staff member or administrator conducts a search under the direction or supervision of a police officer, he or she becomes a State actor subject to the Fourth Amendment requirements.
3. See Police Directive 12.7, School Resource Unit, for more information.

By Authority Of:

Earl L. Cook
Chief of Police